

STATINTL

14 December 1955

OGC Has Reviewed

MEMORANDUM FOR: The Record

SUBJECT : Contract Employees

1. 12 December I again telephoned Mr. James McGurrin, Program Planning Staff, Civil Service Commission (Code 141, ext. 3739).

2. I asked him if he could give me the rationale for his statement, in our earlier conversation, that there was no general authority available in the Government to employ by contract, except for experts and consultants. His position is that in the Government no funds may be expended without affirmative authority. So far as personal services are concerned the only affirmative authority is for appointment (except for experts and consultants). Some agencies have such special authority in their organic acts or appropriations bills. Some of the arguments advanced by him to demonstrate the difference between appointment and contract were a little unconvincing:

(a) Different people are named as contracting officers and appointing officers; therefore, these must be different functions.

(b) An appointing officer cannot make a promise binding upon the Government and the prospective employee has no rights until formally appointed. I refrained from pointing out that a contract to make a contract is always unenforceable.

(c) He gave an example of certain commitments by appointing officers which are honored by the Government. He said that generally if an appointing officer promises an employee, for example, that his family may join him in a foreign area and it is then impossible for his family to join him, the Government will pay the employee's return fare without requiring him to complete his full tour, if he wishes to resign.

3. I asked McGurrin about the new "limited" appointments, authorized by Executive Order 10641. He suggested that I call Mr. Steele, Code 141, ext. 5291 or Mr. Maslo, ext. 3606. Both are working on the regulations under this Executive Order.

4. McGurrian also mentioned two Comptroller General opinions to the Secretary of the Navy, about 1951 or 1952, pertaining to de facto employees, which may be of interest to us.

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Assistant General Counsel